

1 VENABLE LLP  
2 Steven E. Swaney (SBN 221437)  
seswaney@venable.com  
101 California Street, Suite 3800  
3 San Francisco, CA 94111  
Telephone: 415.653.3750  
4 Facsimile: 415.653.3755

5 Leonard L. Gordon (*pro hac vice*)  
llgordon@Venable.com  
6 Benjamin P. Argyle (*pro hac vice*)  
bpargyle@Venable.com  
7 151 W. 42nd Street, 49th Floor  
New York, NY 10036  
8 Telephone: 212.307.5500  
Facsimile: 212.307.5598  
9

10 Attorney for Non-Party Nintendo of America

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13  
14 FEDERAL TRADE COMMISSION

15 Plaintiff,

16 v.

17 MICROSOFT CORPORATION,

18 and

19 ACTIVISION BLIZZARD, INC.,

20 Defendants.

Case No. 23-cv-02880-JSC

**[PROPOSED] ORDER GRANTING  
NINTENDO OF AMERICA INC.  
STATEMENT PURSUANT TO LOCAL  
RULE 79-5(f) AS TO WHY ITS  
CONFIDENTIAL INFORMATION IN  
DKT. NOS. 111 AND 111-43  
(DEFENDANTS' MEMORANDUM OF  
LAW IN OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION) SHOULD  
BE FILED UNDER SEAL**

21  
22  
23  
24  
25  
26  
27  
28

## **[PROPOSED] ORDER**

Having considered Nintendo of America Inc.'s Statement Pursuant to Local Rule 79-5(f)  
As to Why Its Confidential Information in Dkt. Nos. 111 (Defendants' Memorandum of Law in  
Opposition To Motion For Preliminary Injunction) and 111-43 (Exhibit 47) Should Be Filed  
Under Seal, the Court ORDERS that:

[ ] The reference to NOA's witness transcript at page 11 n.7 of Defendants' Memorandum (Dkt. 111) is to be sealed, and Dkt. No. 111-43 is to be sealed in its entirety.

[ ] The reference to NOA's witness transcript at page 11 n.7 of Defendants' is to be sealed, and the portions of Dkt. No. 111-43 identified as confidential in NOA's Statement (Dkt. No. 219) (copied below) are to be redacted and kept under seal.

**(Copied from Nintendo of America Inc.'s 79-5 Statement (Dkt. No. 219):  
"PX7059 (FOR REFERENCE)"**

Category	Transcript Citation(s)
Category 1 (Research and Development for Future Business)	(20:5-22:5); (61:9-62:9); (62:11-64:23)
Category 2 (Gaming Content Development)	(19:4-19:23); (20:5-22:5); (24:17-25:8); (25:10-25:24); (25:25-27:24); (28:1-29:9); (29:10-30:1); (31:3-31:8); (31:9-31:18); (31:20-33:15); (34:18-36:3); (40:5-41:2); (41:4-42:19); (46:25-48:5); (48:7-49:12); (50:7-51:16); (56:23-57:8); (57:23-58:17); (59:14-59:18); (60:16-61:7); (62:11-64:23); (64:25-65:24); (66:9-68:15); (68:16-70:17); (71:15-72:9); (72:11-73:11); (81:12-82:12); (84:19-85:8); (101:4-102:9); (104:11-105:23); (106:22-107:4); (110:9-113:8); (116:16-117:10); (139:1-139:5); (148:11-148:19); (149:11-151:7); (155:15-156:7)
Category 3 (Competitive Approach)	(22:7-22:25); (23:14-23:19); (24:17-25:8); (42:21-43:15); (43:24-45:3); (45:5-45:9); (45:15-46:2); (46:14-46:23); (94:14-95:3); (95:10-96:2); (113:25-115:3); (117:11-117:24); (118:7-118:24); (118:25-122:3); (122:4-122:9); (122:10-122:21); (153:12-153:21); (154:13-155:13); (155:15-156:7); (158:7-162:11)
Category 4 (Internal Discussions of LOI and Side Letter)	(146:11-147:6)

1	Category 5 (Confidential Negotiations with Microsoft regarding LOI and Side Letter)	(42:21-43:15)
2	Category 6 (Witness's Understanding of LOI and Side Letter)	(10:5-10:16); (143:3-143:10); (143:18-144:16); (144:18- 144:25); (145:2-146:1); (146:11-147:6); (147:8-147:15); (156:9-157:14)
3	Category 7 (Confidential Business Information)	(17:25-18:8); (18:20-18:25); (30:5-30:17); (30:18-31:2); (34:18-36:3); (38:4-38:14); (70:19-72:9); (74:25-76:5); (76:16-77:18); (79:2-79:15); (79:17-80:12); (82:20-83:18); (85:15-86:3); (86:9-86:17); (89:1-89:8); (89:18-90:2); (90:4- 90:21); (91:5-91:24); (92:7-94:12); (98:24-100:3); (102:10- 103:3); (103:5-103:15); (103:17-104:8); (107:19-108:13); (108:15-109:7); (109:9-110:7); (122:23-123:10); (123:11- 123:18); (123:25-125:16); (126:16-127:1); (128:2-128:11); (128:13-129:11); (139:17-140:3); (140:9-140:17); (141:1- 141:7); (152:2-152:7)
4	Category 8 (Transcript Reference Tables)	164:9-17; and pages PX7059-143 through PX7059-69 (word index)

13 **IT IS SO ORDERED.**

14 Dated: \_\_\_\_\_

15  
16  
17 HON. JACQUELINE SCOTT CORLEY  
18 United States District Judge

27